RECENT CASES

ADVERSE POSSESSION — CONTINUITY — ADVERSE POSSESSION IN CONTEMPT OF COURT. — In an action of trespass to try title plaintiff recovered judgment, and defendant was perpetually enjoined from trespassing on the land in question. Defendant continued to occupy the land for the period required by the Statute of Limitations. Plaintiff again brings an action of trespass to try title. *Held*, that title was acquired by adverse possession. *Ludtke* v. *Smith*, 186 S. W. 266 (Texas).

The case is more unique than difficult. It is well settled that the recovery of a judgment in ejectment, defendant remaining in possession, will not interrupt the running of the statute. *Smith* v. *Trabue*, 1 McLean 87, Fed. Cas. No. 13116; *Jackson* v. *Haviland*, 13 Johns. (N. Y.) 229; *Smith* v. *Hornback*, 14 Ky. 232; *Mabury* v. *Dollarhide*, 98 Mo. 198, 11 S. W. 611. In one case where a decree ordering a conveyance had by statute itself the operation of a conveyance, an opposite result was reached. *Gower* v. *Quinlan*, 40 Mich. 572. But clearly an injunction, directed simply at the defendant personally, can have no effect on his relation to the land, which is the only thing the Statute of Limitations is concerned with.

APPEAL AND ERROR — NOMINAL DAMAGES — REFUSAL TO REVERSE. — The plaintiff sued for a libel actionable *per se* according to a statutory definition, alleging no special damage. The trial court sustained the defendant's demurrer to the declaration. The libel was of such a nature that no punitive damages were involved. *Held*, that, although the trial court erred in sustaining the demurrer, judgment be affirmed since only nominal damages are involved. *Jones* v. *Register & Leader Co.*, 158 N. W. 571 (Iowa).

It is a well-established rule that the upper court will not reverse an erroneous judgment in order to allow nominal damages. *Harwood* v. *Lee*, 85 Iowa 622, 52 N. W. 521; *Kelly* v. *Fahrney*, 97 Fed. 176; *East Moline Co.* v. *Weir Plow Co.*, 95 Fed. 250. But the dependence of costs upon a reversal makes an affirmance unjust. Moreover, there is a general exception to the stated rule if substantial rights are involved. *Lewis* v. *Flint, etc. Ry. Co.*, 153 Mich. 638, 23 N. W. 469. See *Heater* v. *Pearce*, 59 Neb. 583, 587, 81 N. W. 615, 616. It has been so held, for example, in actions for trespass to determine title. *Wing* v. *Seske*, 109 N. W. 717 (Iowa); *Harriss* v. *Sneeden*, 104 N. C. 369, 10 S. E. 477. A similar decision was rendered in an action which, by establishing rights concerning a continuing nuisance, created an adjudication binding for any later case which might arise. *Harvey* v. *Mason City, etc. R. Co.*, 129 Iowa 465, 105 N. W. 958. In the principal case a substantial right might well be found in the interest of the plaintiff to have his reputation cleared by some sort of a decision in his favor. Nor would it be necessary to reverse judgment and remand the cause in order to protect the plaintiff. There is plenty of authority allowing the appellate court to render a final judgment itself. *Roberts* v. *Corbin & Co.*, 28 Iowa 355; *Yeoman* v. *Lasley*, 40 Ohio St. 339. See *Bernhardt* v. *Brown*, 118 N. C. 700, 24 S. E. 715. And such procedure is not prevented by the Iowa code. See 1897 IOWA CODE, § 4139.

BROKERS — WRONGFUL SALE OF STOCK — RIGHT OF CUSTOMER TO SIMILAR STOCK NOT ACQUIRED FOR THE PURPOSE OF RESTITUTION. — A stockbroker purchased on credit for the plaintiff 100 shares, and at different times for other customers 180 shares, of a certain stock. He subsequently disposed of all stock of this kind. Later he acquired 100 shares of the same kind of stock. These shares were neither acquired nor held on behalf of any particular stockholders.

Upon his bankruptcy the plaintiff petitions for $\frac{100}{280}$ of these shares. *Held*, that the plaintiff may recover. *Duel* v. *Hollins*, 36 Sup. Ct. Rep. 615.

By the weight of authority a customer has a property right in stock purchased on credit for him by a stockbroker. *Richardson* v. *Shaw*, 209 U. S. 365. See 19 HARV. L. REV. 529. *Contra*, *Covell* v. *Loud*, 135 Mass. 41. But the stock is considered fungible and the broker is only required to keep for the customer sufficient stock of the same kind. *Caswell* v. *Putnam*, 120 N. Y. 153, 24 N. E. 287; *Richardson* v. *Shaw*, *supra*. Where one who holds property subject to the rights of another wrongfully disposes of it and later reacquires it, he of course still holds it subject to those rights. *Williams* v. *Williams*, 118 Mich. 477, 76 N. W. 1039; *Church* v. *Ruland*, 64 Pa. St. 432, 444; *Schutt* v. *Large*, 6 Barb. (N. Y.) 373, 380. Now the same is held where the wrongdoer disposes of fungible property — stock, for example — and later acquires similar property. *In re Brown*, 171 Fed. 254. These decisions are sometimes based on a presumption that the acquisition was for the purpose of restitution. But it is often difficult to justify such presumption. Further, it is hard to see on what principle the law gives legal effect to this intention if it is presumed. A less artificial and more satisfactory explanation would seem to be a constructive trust, imposed by law on the wrongdoer when he is capable of making specific reparation for his wrongful disposal of property. This broader principle would give a right in a case, like the principal case, where circumstances rebut the presumption of an intent to restore.

CARRIERS — PERSONAL INJURIES TO PASSENGERS — DUTY TO PROTECT FROM ASSAULT. — The plaintiff, a negro, while waiting in a depot to take passage on a train, was assaulted by the town marshal, who was running all negroes out of town. The station agent, who knew all of the circumstances, made no attempt whatever to interfere. The plaintiff sues the railway. *Held*, that the defendant is not liable. *Fennell* v. *Atchison, Topeka & Santa Fe R. Co.*, 158 Pac. 14 (Kan.).

The duty of carriers to protect their passengers from assault cannot be questioned. *Seawell* v. *Carolina Central R. Co.*, 132 N. C. 856, 45 S. E. 850; *Texas, etc. R. Co.* v. *Jones*, 39 S. W. 124 (Tex. Civ. App. 1897). See *Southern R. Co.* v. *Hanby*, 183 Ala. 255, 259, 62 So. 871, 873. This applies even to assaults and arrests made by officers of the law if the carrier has notice that the conduct of the officer is wrongful. See 2 HUTCHINSON, CARRIERS, § 987. But since carriers are not insurers of safe passage, it must appear, in order to establish liability, that the assault was forseeable and could have been prevented. See *Pittsburg, etc. R. Co.* v. *Hinds*, 53 Pa. 512, 515. See 25 HARV. L. REV. 470. The principal case assumed that a lesser duty is owed to the populace waiting in the station for trains than to those on board trains. See 2 HUTCHINSON, CARRIERS, § 989. But the rule is well settled that persons entering depots for the purpose of taking passage are passengers. *Exton* v. *Central, etc. R. Co.*, 62 N. J. L. 7, 42 Atl. 487. See 2 WOOD, RAILROADS, § 298.

CARRIERS — SLEEPING CARS — LIABILITY OF CARRIER FOR PULLMAN EMPLOYEE'S TORT TO TRESPASSER. — The plaintiff's husband, who was trespassing on a Pullman car, was impelled by the threatening conduct of a Pullman conductor to jump off the train, and sustained fatal injuries. The plaintiff sues the railroad. *Held*, that the railroad is not liable, as the conductor was not its servant. *Louisville & Nashville R. Co.* v. *Marlin*, 186 S. W. 595 (Tenn.).

It is well settled that Pullman employees are not, except under special arrangements, general servants of the railroad. *Robinson* v. *Baltimore & Ohio R. Co.*, 237 U. S. 84; *cf. Oliver* v. *Northern Pacific R. Co.*, 196 Fed. 432. Yet railroads are often held liable to passengers for acts of Pullman employees which touch the railroad's duty. *Pennsylvania Co.* v. *Roy*, 102 U. S. 451;